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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/485,288	02/07/2000	THOMAS ECKEL	MO-5494/LEA	1739
7590 10/28/2003		EXAMINER		
BAYER CORPORATION		SZEKELY, PETER A		
100 BAYER ROAD		ART UNIT		
PITTSBURGH, PA 15205-9741		PAPER NUMBER		

1714

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/485,288	ECKEL ET AL.	
	Examiner	Art Unit	
	Peter Szekely	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-10 and 14-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-10 and 14-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The final rejection is withdrawn by the examiner, in order to introduce new evidence and arguments.

#### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-6, 8-10 14, 15, 17 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Eckel et al. 5,672,645.

#### ***Claim Rejections - 35 USC § 103***

4. Claims 1-6, 8-10 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckel et al. 5,672,645, in view of Bodinger et al. 5,849,827.
5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Response to Arguments***

6. Applicant's arguments filed 9/26/03 have been fully considered but they are not persuasive. There is no wide range and narrow range in the instant application. There is only a narrow range and a narrower range shown. Applicants are trying to carve out a sliver from a range, which is a microscopic, half a micron. Furthermore, even if we accept that the range-within-range is significant, Mr. Eckel's Declaration has no probative value. The Vicat B 120 does not change, the tensile modulus of elasticity increases by a scant 4.8%, the improvement in tensile strength (4.0%) is even less. The only significant improvement seen is

percentage elongation at break (24%). However, this property is not mentioned in the specification. Basic property or utility must be disclosed in order for affidavit evidence of unexpected properties to be offered. In re Davies et al., 177 USPQ 381. Additionally, Hughes et al. H1341, in the paragraph overlapping columns 5 and 6 and Table VI, Morikawa et al. 5,397,533, in column 5, lines 22-25, Wang et al. 5,994,480, in the paragraph overlapping columns 11 and 13 and Asano et al. 6,013,700 in Figure 6, all show, in widely divergent compositions, that elongation improves with decreasing particle size. Thus the improvement in ultimate elongation, when the particle size drops from 0.4 micron to 0.3 micron, is not unexpected. Claim 8 claims "up to 35%" and that includes zero. Bodinger et al. discloses the finely divided filler. He rejections are reinstated.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (703) 308-2460. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Peter Szekely  
Primary Examiner  
Art Unit 1714

P.S.  
10/21/03